MINUTES

OF THE

ENVIRONMENTAL PROTECTION COMMISSION

MEETING

OCTOBER 8, 2001

WALLACE STATE OFFICE BUILDING
DES MOINES, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairman Townsend at 2:00 a.m. on Monday, October 8, 2001, in the Wallace State Office Building, Des Moines, Iowa.

MEMBERS PRESENT

James Braun
Lisa Davis Cook
Lori Glanzman- via conference call
Darrell Hanson
Kathryn Murphy, Vice-Chair
Kelly Tobin
Terrance Townsend, Chair
Rita Venner, Secretary

MEMBERS ABSENT

Gary Priebe

ADOPTION OF AGENDA

Motion was made by Kathryn Murphy to approve the agenda as presented. Seconded by Rita Venner. Motion carried unanimously.

APPROVED AS PRESENTED

Terry Townsend asked that the record show that Lori Glanzman was present via conference call.

REPORT ON ENVIRON EGG

Mike Valde, Division Administrator, Environmental Protection Division, presented the following item.

This item is a report outlining the engineering review conducted on the proposal by Environ Egg to construct a 1.8 million bird layer facility in Wright County, Iowa.. The report gives an overview of the engineering review conducted by Dr. Sara Smith of our engineering staff on this proposal. Additionally, detailed answers to a number of questions raised at the September 17 EPC meeting are included. Dr. Smith will make a presentation ot the Commission outlining the results of her engineering review including areas of disagreement between the engineer for the applicant and our staff.

Dr. Smith and Wayne Gieselman will both be present to answer any questions that the Commissioners may have. Mr. Gieselman will have some additional comments concerning the history of the legislation, the history of the rule-making, exemptions specifically provided in

legislation, and how the process of reviewing a permit is conducted by the engineering staff of the department.

September 26, 2001

ENVIRONMENTAL PROTECTION COMMISSION (EPC)

Dear Commissioners:

Enclosed is the written response to the questions brought up by the public and the Wright County Attorney during the demand for hearing held on September 17, 2001 regarding the construction permit CP-A2001-022 issued to Environ. Egg Production Co. – Skinner Layer Site.

When our office receives a construction application for an animal feeding operation, we carefully review each project against a departmental checklist. The checklist is to verify that the information being submitted is complete and that all statutory and rule requirements are satisfied. Each project receives thorough consideration, regardless of the applicant and whether the project receives comments from the county or not. In addition, our office adopts a pro-active approach and works closely with the applicant and the design engineer to point out areas of the project that must be improved to meet statutory rules. In the case of Skinner Layer Site, all areas of the project received thorough review and consideration. We are confident the project, as approved, met and exceeded current regulations. Thus a construction permit was issued.

If you have any questions please feel free to contact me at (515) 281-5817 or the review engineer Dr. Sara Smith at (515) 242-5521.

QUESTIONS BY MICHAEL HOUSER, ATTORNEY FOR WRIGHT COUNTY:

1. Concerns about proliferation of factory farms in Wright County.

   Response: Assuming that all separation requirements are met, neither Iowa Code Chapter 455B nor 567 Iowa Administrative Code (IAC) Chapter 65 limit the number of animal feeding operations in an area. Therefore the department does not have the authority to deny this permit based on the number of existing animal feeding operations in Wright County.

   Conclusion: The department cannot deny a permit based on requirements that do not exist.

2. Concerns that quality of air has already deteriorated and it will get worse with 1.8 million chickens.

   Response: The department lacks air quality standards that apply to animal feeding operations. The Commission has requested further research in this area before air quality standards are established.

   Conclusion: The department cannot require an applicant to comply with standards that do not exist.

3. Concerns that manure will not be removed for a whole year.

   Response: There is no provision in the 567 IAC Chapter 65 that requires more frequent manure removal. 567 IAC 65.2(3) - "a" states: "Sufficient capacity shall be provided in the manure storage structure to store all manure between periods of manure application." The department typically requires sufficient storage for 6 to 8 months, when manure is land applied twice a year or for 12 to 14 months, when manure is land applied once a year. 567 IAC 65.2(3) - "b" requires that "manure shall be removed from the control facilities to prevent overflow or discharge of manure." Initially, the project design engineer estimated the manure production at about half of the department numbers and storage capacity for more than 2 years. The department determined that Environ. Egg should provide us with the source of their estimates or adopt the numbers from 567 IAC 65, Table 3. The project was finally changed to reflect the department's estimates in manure production, reducing the storage capacity to about 14 months. The agreement for sales of manure was also changed to reflect an annual manure removal, instead of removal every two years, as initially proposed.

   Conclusion: The project was revised to meet departmental standards for both manure production and storage capacity. The current proposal meets the standards of the department.

4. States that the odor that will be generated at Skinner Layer is an air pollutant.

   Response: The department lacks odor regulations and air quality standards that apply to animal feeding operations.

   Conclusion: The department cannot impose on an animal feeding operation a requirement that does not currently exist.

5. Expressed that separation distances are not sufficient.

   Response: The Iowa General Assembly has established minimum separation distances by statute that have been adopted by the department. Exemptions to these separation distances were also promulgated by the General Assembly, 455B.165.1, Code of Iowa which at that time, did not impose more restrictive distances when manure is handled exclusively in a dry form. This facility meets or exceeds all established applicable separation distances requirements. In addition, because this facility will be handling manure exclusively in dry form, the manure storage building is exempt from complying with these separation requirements. However, the permittee has designed this operation in a way that the manure storage building complies with separation distances applicable to operations that handle liquid manure, even though they are not required to do so.

   Conclusion: The department cannot require greater separation distances than those already established by the General Assembly, particularly when the General Assembly has specifically exempted facilities that handle manure exclusively in a dry form from distance requirements.

6. Concerns about gases produced at the site.

Response: The department lacks air quality standards that apply to animal feeding operations. Therefore, the department cannot regulate gases produced at animal feeding operations.

Conclusion: The department cannot require an applicant to comply with regulations that do not exist.

7. Concerns about when a storm comes.

Response: 567 IAC 65.2(3) requires that animal feeding operations provide sufficient storage capacity if precipitation can enter the manure storage structure. The rule, however, does not specify the amount of precipitation. As a policy, the department requires sufficient storage for 8" of rain, which is higher than the 25-year, 24-hour storm. In Iowa the 25-year, 24-hour storm varies between 4.8" and 5.8". In the case of the Skinner Layer Site, the manure is stored in a closed building, and must be kept exclusively in a dry form. The only uncovered structures are the egg washwater storage basins. The permittee is providing 8" for storage of precipitation, in addition to the 2 feet of freeboard in the egg washwater storage structures. Further, the permittee has complied with the department's policy to require that all surface drainage shall be rerouted outside the manure storage structures.

Conclusion: The permittee has complied with providing sufficient storage for precipitation in the egg washwater storage structure and is providing an adequate drainage system to prevent any runoff from entering the egg washwater storage structures and the manure storage building.

8. Concerns about how manure will be handled during the winter months.

Response: As required in 567 IAC 65.2(3) - "c", condition 11 of the construction permit requires the permittee to remove manure from the manure storage structure prior to the winter months to allow for sufficient capacity when manure cannot be land applied due to climatic factors. According to the department's estimates, sufficient storage is being provided to store the manure in the manure storage building for up to 14 months.

Conclusion: This issue has been addressed in the construction permit and the permittee has complied with current regulations by providing sufficient manure storage capacity.

9. Concerns that if manure is left unattended it is going to produce runoff.

Response: 567 IAC 65.2(3) requires "retention of all manure produced in the confinement enclosures between periods of manure application." In addition, condition 11 of the construction permit requires "All manure produced in the confinement buildings shall be retained between periods of manure application in the manure storage building. Prior to entering the winter season, a sufficient volume of manure shall be removed from the manure storage building to provide adequate volume for storage of manure produced in the livestock production facilities during the winter season. At all times, manure shall be kept exclusively in dry form." Therefore, if manure is kept other than in a dry form and outside the manure storage building, it will be a violation of the conditions of the construction permit.

Conclusion: This issue has been addressed in the construction permit.

10. The site sits at the top of a drainage district.

    Response: This issue was well discussed with the permittee during the review process. After further inquiries it was determined the department does not have authority to regulate surface drainage districts. Therefore, this issue was not further addressed during the review. The county, however, hired an engineering firm to determine the boundaries of these drainage districts, and the department was informed that Environ. Egg Production Co. will be required by the county to build a storm water impoundment.

    Conclusion: The department has no authority to regulate surface drainage districts.

11. What is the plan if manure is found to be "non-marketable"?

    Response: Pursuant to the 567 IAC 65.17(2) - "a", requires that confinement feeding operations that will sell dry manure regulated by the Iowa Department of Land and Stewardship (IDALS) under Iowa Code Chapter 200A shall submit documentation that manure will be sold. In addition, Subrule 65.17(2) "b" requires that operations not fully covered by paragraph "a" shall submit documentation pertaining to a manure management plan. Further, condition 10 of the construction permit requires "All manure removed from the confinement buildings and manure storage facilities shall be sold under Iowa Code Chapter 200A". Therefore, the department affirms that the requirements set forth by current regulations have been imposed on the permittee. Current regulations do not require animal feeding operations to develop a backup plan for land application of manure. In practice, even animal feeding operations that apply their own manure are allowed to change the manure application fields, as originally approved, as long as they fulfill the requirements of record keeping and maintaining a current plan at the site. Likewise, Environ. Egg is required to maintain a current plan meeting land application requirements if the manure cannot be sold.

    Conclusion: The department asserts that the requirements set forth by current regulations have been met by the permittee.

12. What is going to happen if manure cannot be removed?

    Response: Please see response to question 11. The department further explains that as required in the construction permit, all manure is to be sold under Iowa Code Chapter 200A. If for any reason, the permittee does not sell all the manure, an approved manure management plan shall be required prior to land application of manure. For this operation, land application of manure without an approved manure management plan will be considered a violation of the 567 IAC. In addition, department Field Office No. 2, has indicated that it has never received a report that a poultry operation has been unable to sell its dry manure.

    *Conclusion: This issue has been addressed in the construction permit with the conditions that **all** manure shall be removed from the manure storage building at least once a year and that **all** manure is to be sold under Iowa Code Chapter 200A. If the permittee manages the manure in a different way, it would be in violation of the conditions of the construction permit and the department's rules.*

13. Concerns about safety of employees because federal standards require a self-contained apparatus.

Response: The department has no authority to regulate employee safety standards. In addition, condition 14 of the construction permit states "The issuance of this permit in no way relieves the permittee of the responsibility for complying with all local, state and federal laws, ordinances, regulations and other requirements applying to the construction and operation of this facility." This means the permittee is still required to obtain any other applicable permit.

Conclusion: The department has no authority to regulate employee safety standards.

14. Expressed that according to 455B.141 the commission has the power to put a hold on the permit until all the concerns are further addressed.

Response: The cited statutory provision authorizes the department director to request the Attorney General to commence legal action, including injunctive relief, to address air pollution violations. Wright County's "Demand for Hearing," Exhibit A, cited Iowa Code section 455B.134(3) in support of the contention that the commission should instruct the director to suspend the permit. However, that statutory provision relates to construction and operation permits for air contaminant sources, not animal feeding operation permits.

Conclusion: The cited statutory provisions do not authorize the commission to suspend the permit. However, the department has the authority, pursuant to 567 IAC 65.7(6), to seek the revocation of a construction permit if it determines that the operation constitutes a clear, present and impended danger to the public health or the environment. The commission would have the authority to render a final decision in any contested case resulting from a revocation action by the department.

QUESTIONS RAISED BY BRENT NICHOLS, PRESIDENT OF THE WRIGHT COUNTY CHAPTER OF THE IOWA FARMERS UNION:

15. Support the Wright County Board of Supervisors in their request to revoke the permit and raised concerns about air quality.

Please see response to question No. 2.

16. Concerned about concentration of confinement feeding operations in the area and in Lincoln Township that already has 6 ½ million layer hens and because the new site is only 2 miles apart from other existing sites.

Please see response to question No. 1.

17. Concerns about odors and gases.

Response: The General Assembly has addressed indirectly the issue of odors by establishing minimum separation distances. This facility is exempt from some separation distances because it will handle manure exclusively in dry form. However, the permittee is complying with all separation distances, including those that would be required if manure were not handled dry. The department lacks air quality standards that apply to animal feeding operations and cannot require odor control practices (Please see responses to questions No. 4, 5 and 6). Upon receipt of public comments, the department requested the permittee to describe proposed odor and fly control methods

to be implemented. The permittee submitted pertinent information, even when it was not required.

Conclusion: The department cannot impose requirements that are not included in current regulations.

18. Concerns that there is no manure management plan (MMP).

Response: The permittee timely submitted information to the department indicating that all manure produced at this facility will be sold as a soil conditioner which is regulated by the Iowa Department of Agriculture and Land Stewardship (IDALS) under Iowa Code Chapter 200A. 567 IAC 65.17, essentially provides that when manure is to be sold as a soil conditioner, the documentation of that fact satisfies manure management plan requirements.

Conclusion: The permittee has complied with the requirement to submit a manure management plan by documenting that it would be selling dry manure pursuant to Iowa Code Chapter 200A.

19. Mentioned that for that size of operation it should be a commercial facility.

Response: Classifying a facility as "commercial" has no applicability to the department's permit authority. This facility meets the definition of an 'animal feeding operation' because the birds will be confined, fed and maintained the whole year. This operation also meets the criteria of a 'confinement feeding operation' because the birds are confined to areas which are totally roofed. This poultry confinement feeding operation is required to obtain a construction permit because it exceeds 1,250,000 lb. and manure will be handled exclusively on a dry form and because it will use two egg washwater storage structures. The "commercial" label is usually applied to support the contention that a large animal feeding operation does not qualify for the county zoning exemption (Iowa Code section 335.2) afforded to land and structures used for agricultural purposes. In that regard condition 14 of the construction permit states that the permittee is not released from the responsibilities to comply with any other local, state or federal requirements.

Conclusion: The permittee meets the department's criteria of a confined animal feeding operation, in which a construction permit is required. It is the permittee's responsibility to obtain any additional permits that may apply.

20. Concerns about piling of manure in cement pads and that manure is piled all over Wright County.

Response: Manure produced at this facility will be stored in a separate, closed manure storage building. Storage of manure using other practices, including piling of manure in cement pads outdoors, will be in this case prohibited and will be a violation of the construction permit. The department is currently negotiating with the Animal Agriculture Consulting Organization (AACO) to develop guidelines and regulations pertaining to stockpiling of dry manure.

Conclusion: This issue has been addressed in the approved plans and the construction permit, because manure will not be stockpiled outdoors at this site.

QUESTIONS RAISED BY Mr. ERIC DAVIDSON FROM THE IOWA CITIZENS FOR COMMUNITY IMPROVEMENT (CCI):

21. Concerns about concentration of animal feeding operations.

    Please see response to question No. 1.

22. Concerns about air quality and air quality rules.

    Please see response to question No. 2.

23. Concerns about stockpiled manure being left sitting for a year or longer, all over the place.

    Please see response to question No. 20.

24. Concerns about ground water issues because the site threatens ground water quality. Referred to a document brought up by his organization containing some comments made by the department's Geological Survey Bureau (GSB) during the review of the project.

    Response: The department spent a great deal of time reviewing the ground water separation issue. The initial application materials submitted to the department did not comply with minimum ground water separation. The project reported ground water elevations from 1210.9 to 1226.7 feet and proposed the bottom of the egg washing storage structures at an elevation of 1224.0 feet. The department had serious concerns with ground water separation because it cannot allow construction of manure storage structures below the ground water table.

    The project was modified by raising the bottom of the egg washing storage structures to 1229.7 feet and proposing subsurface drain tile lines backfilled to lower the ground water table. The department still had concerns on the adequacy of this tile drainage system because ground water measurements were made during a drier part of the year and no calculations on the initially proposed ground water lowering system were included at that point. Comments provided by the department's GSB reflected these concerns.

    567 IAC 65.15(7) - "c" does not specify the time of the year this measurement had to be made, but the department however requires that measurements shall reflect the average annual high water table. In addition, paragraph 65.15(7) "c" further states that "if a drainage system for artificially lowering the ground water table will be installed in accordance with the requirements of paragraph 65.15(7) "b", the level to which the ground water table will be lowered will be considered to represent the average annual high water table.

    Under this rule provision, the project was modified again by the design engineers and presented in a meeting with the department (including GSB staff). The project then proposed an open trench drainage system around the egg washing storage structures. The bottom elevation of the proposed open trench drainage system is about 8 feet below the bottom elevation of the egg washing storage structure. As a result, the egg washing storage structure will, in effect, be located above ground since an open trench will be cut around the basin.

    In response to departmental's comments, the design engineers also submitted the necessary calculations on the proposed ground water lowering system, which were

evaluated by the department (including GSB) and it was determined that, based on the information provided and the provisions of the rules, additional ground water measurements were not necessary. The department's GSB, however, recommended that ground water monitoring shall be required and temporary test pits shall be constructed prior to the construction of the liner to verify that the minimum ground water separation is being met at the time of construction. These recommendations were included in conditions No. 4, 5 6, 7 and 8 of the construction permit.

Conclusion: The department believes that the requirements set forth in current regulations on the issue of ground water separation have been adequately addressed. Comments by the department's GSB were pointed at earlier versions of the construction plans, not the plans that were ultimately approved.

25. Concerns about the potential for ground water contamination in the immediate vicinity, which is extremely high.

Response: The department has required the permittee to perform long-term ground water monitoring. For that purpose, 4 monitoring wells will be installed and ground water table elevations will be determined weekly during the wetter months (March through June 2002 and 2003) and monthly the rest of the year. The monitoring results shall be submitted to the department to evaluate whether the minimum required separation distances to ground water is being met. If this separation distance is not being met, the department will take immediate action. The project proposes to install a 2-foot thick compacted liner, which shall have a percolation rate that is not in excess of 1/16 inches/day at the design depth as allowed by current regulations.

Conclusion: Conditions 6, 7 and 8 of the construction permit included requirements and specifications for liner construction, short and long-term ground water monitoring. The department believes that the requirements set forth in current regulations to protect ground water have been met.

26. What would happen to that water? (excess ground water)

Response: The excess ground water coming from the artificial ground water lowering system will be discharged to a surface outlet southeast of the proposed confinement buildings. Current regulations do not specifically address the final disposal of this excess ground water. The department, however, further evaluated whether a water withdrawal permit was required for this artificial ground water lowering system and the department concluded no such permit was needed since the estimated amount to be withdrawn, according to the permittee is 6,500 gallons/day. In addition, the review engineer from the department consulted the issue of this discharge with Darrell Christensen, and engineer from McClure Engineering who was retained by Wright County to evaluate the impact of this proposed site on drainage. During a phone conversation, Mr. Christensen explained to the department's review engineer that there were no concerns if the excess ground water is surface discharged. However, Mr. Christensen expressed concerns if this excess ground water was going to be discharged to the sub-surface tile drainage system because the sub-surface tiles are already working up to capacity in the area and a bigger size of tiles would be needed. Therefore, upon this reasonable inquiry the department concluded no further information in this issue should be requested from the applicant because surface drainage is not addressed in 567 IAC chapter 65.

27. Concerns that no one has talked about whether the ground water lowering system is going to work and concerns from the department's GSB that it may not.

    Response: Please see response to question No. 24.

    Conclusion: The permittee has complied with current regulations regarding ground water separation.

QUESTIONS RAISED BY Mr. ERIC EIDE FROM FORT DODGE, ATTORNEY TO ADJACENT LAND OWNERS:

28. Questioned what is the actual ground water level beneath these proposed lagoons (egg washing storage structures)? Concerns that this has not being considered and whether the measurements were made during a wet or dry time of the year. Questioned that not even the review engineer knows the answer.

    Response: Please see response to question No. 24. The average annual high water table, after the artificial ground water lowering system has been built, would be 1225.15 feet, which will provide a separation of 4.55 feet from the bottom of the egg washing storage structure.

    Conclusion: Please see response to question No. 24.

29. Expressed that the response to public comments mentioned the ground water table may be as high as 1232 feet and is concerned about what would happen if it is higher than that.

    Response: The design information on the proposed artificial ground water lowering system was carefully reviewed and it was determined that it complies with the requirements set forth in 567 IAC 65.15(7). The department believes that if such systems were not efficient they would not even be allowed in current regulations. In addition, condition number No. 7 of the construction permit contains the requirements for temporary test pits, prior to the construction of the liner to verify that the minimum separation to ground water is being met. If the separation is less than 2 feet, a synthetic liner shall be installed. In no case, shall the bottom of the egg washing storage structures be built below the ground water table. Further, condition No. 8 of the construction permit contains the requirements for long-term ground water monitoring to verify that the required separation to ground water is being met.

    Conclusion: The department believes the requirements set forth in the 567 IAC Chapter 65 for ground water separation has been met and the issue has been addressed in the construction permit.

30. Questioned whether the ground water lowering system is going to work and expressed concerns that nobody knows and that the applicant "anticipates" it will lower the ground water.

    Response: Please see response to question No. 27. Current regulations require "detailed engineering and soil drainage information shall be provided" when an artificial ground water lowering system is being proposed. The artificial ground water lowering system has been designed by two professional engineers licensed in the State of Iowa, they represent two consulting companies: Dennis Johnson & Associates and Allender Butzke Engineers. The department believes, upon extensive evaluation, the requirements of

paragraph 65.15(7) to provide adequate separation to ground water has been met. In addition, conditions 7 and 8 of the construction permit will ensure that the minimum separation distance to ground water is being met. In addition, condition No. 7 of the construction permit contains requirements for the construction of 6 temporary sump test pits, prior to the construction of the compacted liner. The purpose of these temporary test pits is to verify that the minimum separation to ground water as required in paragraph 65.15(7) "a" is being met. If the ground water separation is less than 2 feet, the permittee shall either raise the basin to comply with the minimum separation or shall install a synthetic liner. However, in no case shall the bottom of the egg washing storage structures be allowed to be built below the ground water table.

Conclusion: The permittee has complied with current regulations addressing ground water and the department believes this issue has being adequately addressed in the construction permit. The requirement of long-term monitoring has been imposed on the permittee to verify that the minimum separation distance to ground water is being met, after the artificial ground water lowering system has being installed.

31. How much runoff is going to come from the roofs? And expressed concerns that nobody knows, even though there are more than 20 acres of roof. Also expressed concerns that neither the 100-year storm nor the 25-year storm have been considered.

    Response: Current regulations do not require confinement operations to address the issue of surface drainage, regardless of the intensity of precipitation. The department, however, requires in all applications that all surface drainage shall be diverted to prevent it from entering the egg washwater storage structure or any manure storage facility. The permittee has complied with the department's requirements. The total roof area proposed at this site is about 10 acres and not 20 acres. Current regulations do require retention of surface drainage for open feedlots but not for confinement operations.

    Conclusion: The department cannot impose on a confinement feeding operation to further address the issue of surface drainage because it is not required in the rules.

32. How much water is coming off the trenches? Expressed concerns that nobody can tell. Also questioned where this water is going and if it is going to affect existing tiles?

    Response: The department requested this information during the evaluation of the proposed ground water lowering system. The design engineers indicated this is estimated at 6,500 gallons/day. Please, also see response to question No. 26.

    Conclusion: The permittee has complied with providing the detailed engineering and soils information regarding the proposed ground water lowering system.

33. Questioned how can they certify that there is not going to be an impact on the county tile lines?

Response: Pursuant to Subrule 65.9(1) "i" confinement feeding operations are required to submit a drainage certification statement signed by a professional engineer licensed in the State of Iowa. This certification is to ensure that if any drainage tile is encountered during construction, it shall be rerouted to reestablish the drainage prior to operation.

<u>Conclusion</u>: The permittee has complied with the submittal of this certification. In addition, prior to the issuance of the "Authorization to Use" the department shall evaluate the results of the tile investigations and the actions taken.

34. Concerns that there is going to be an impact on state waters.

<u>Response</u>: 567 IAC 65.2(3) prohibits discharge from a confinement feeding operation, regardless of its size and the type of manure produced, into waters of the state. The construction permit, condition No. 11, requires retention of all manure between periods of manure removal. Therefore, any discharge of manure to waters of the state will be considered a violation of 567 IAC Chapter 65.

<u>Conclusion</u>: The permittee has complied with providing sufficient storage capacity to prevent any discharge to waters of the state. In addition, condition No. 11 of the construction permit has addressed this issue.

35. Questioned about what would happen with the water stored in the lagoons. Also he asked the review engineer if there is a MMP and did not know the answer.

<u>Response</u>: The engineering report indicates that the effluent from the egg washing storage structure will be land applied, however, departmental manure management plan rules [567 IAC 65.16(1) - "a"] specifically exempt egg washing storage structures.

<u>Conclusion</u>: The department cannot impose on a confinement feeding operation additional requirements that are not contained in current regulations.

COMMENTS MADE BY PAUL THOMPSON, PASTOR:

36. Requested the commission to deny the permit.

ADDITIONAL ISSUES ADDRESSED BY THE PERMITTEE NOT CURRENTLY REQUIRED BY THE 567 IOWA ADMINISTRATIVE CODE

- <u>Separation distances</u>: Rule 65.12(455B) exempts manure storage structures that handle manure exclusively on a dry form, to comply with minimum separation distances. However, the permittee has complied with the minimum separation distances from the manure storage building to existing houses, churches, business, watercourses, wells, that would apply to facilities of similar size that handle liquid or semi-liquid manure. Therefore the permittee has met and exceeded the requirements for separation distances.

- <u>Minimum number of soil borings</u>: Subrule 65.15(6) "a" requires a minimum of 4 soil borings for any earthen egg washing storage structure. The permittee obtained 6 soil borings. Therefore the permittee has met and exceeded the minimum requirements for soil borings.

- <u>Concrete Standards for the Manure Storage Building</u>: Subrule 65.15(14) exempts manure storage structures that handle manure exclusively on a dry form to meet the aforementioned concrete standards. However, the permittee included concrete standards that met or exceeded DNR criteria for the layer barns (although manure will not be stored in the barns) and for the manure storage building. Therefore, the permittee has met and exceeded the concrete standards.

- Erosion control measurements at the egg washing storage structure: Subrule 65.15(15) requires erosion control measurements to be installed at the inlets and outlets of pipes, pumpout areas and corners of an unformed manure storage structure. However, the permittee is proposing erosion control measurements all along the berm sides. Therefore, the permittee has met and exceeded the erosion control requirements.

- Operation and Maintenance Plan: There is no provision in the statutory rule that requires an animal feeding operation to submit an operation and maintenance plan. However, the permittee has submitted to the department such plan.

- Odors and flies control information: There is no provision in the statutory rule that requires an animal feeding operation to submit information regarding their proposed practices for odor abatement and fly control. However, due to the public comments received the department requested such information. The permittee complied with the department's request, even though they were not required to.

Mike Valde said the Commission asked that the Department set up this meeting to review the permiting procedures and to answer questions about the Environ Egg permit. He said that there would be presentations from Wayne Gieselman, Animal Feeding Operations Coordinator; Dr Sara Smith, Review Engingeer for this permit. He said also present is Bob Libra from the Geological Survey Bureau who was consulting by the permitting engineers during the processing of the permit.

Wayne Gieselman said that the Department had prepared a site drawing of the proposed facility and a map of the general location of the facility with red dots indicating the other permitted animal feeding operations sites in the area, and brown areas indcating the land that is approved for land application of manure, and the watershed features and divides. He said although Big Wall Lake shows up on the map it has a completely separate watershed than the proposed facility. Wayne Gieselman introduced Dr. Sara Smith, Review Engineer who looked at all of the aspects of the projects. He said Sara has a PH.D. in Water Resources and a B.S. and a M.S. in Civil and Environmental Engineering. He said in addition to Dr. Sara Smith and Bob Libra, Wayne Farrand, who is in charge of the permitting for this section and is in charge of the stormwater permitting. He said he also had provided for the Commission copies of the eight page check list of requirements that every facility must meet prior to getting their permit.

Dr. Sara Smith used a Powerpoint presentation to briefly describe the Department's permitting process and the specific details of the review of the Environ Egg permit. She said the conclusion the Department came to in the processing of the Environ Egg permit was that Environ Egg has met all current regulations regarding the groundwater separation, groundwater lowering system, and the submittal of the manure management plan. The Department has no air quality criteria that applies to animal feeding operations, nor do they have any criteria for concentration of animal feeding operation other than the adjacency critera. She said the Department feels that the monitoring requirements that they imposed prior to the construction of the basin and the long term groundwater elevation monitoring will verify that the minimum separation requirement from the groundwater table will be met. She said the Construction permit was approved by the Department on July 31, 2001 and was upheld by the Environmental Protection Commission on September 17.

Kelly Tobin asked why Environ Egg would not need a manure management plan to for the land application of the egg washing water.

Dr. Sara Smith said there is a statutory exemption for egg washing water that says it does not need a manure management plan.

Rita Venner asked if there were any specific methods required for applying the egg washing water or any restrictions on the time of year.

Dr. Sara Smith said there was none.

Darrell Hanson asked if the concerns expressed by the Geological Survey Bureau regarding groundwater issue.

Bob Libra of the Geological Survey Bureau said intially they had concerns about water quality because the water table was so high, there was some sand in the soil profile, and the structure was going to be built well below the water table. He said that is a package of things that if put together raises concerns. The design engineers changed the design to raise the bottom of the structure and put in drainage trenches around it. The Geological Survey Bureau still had some concerns as to whether or not it would work and the design engineers once again raised the floor and deepened the drainage structure. He said the engineers supplied calculations that the Geological Survey Bureau felt was based on reasonable estimates of the material that showed the trenches would lower to the water table to approximately four feet below the bottom of the structure. He said in addition to these changes the Department recommended that four by four test pits be dug within the floor of the structure prior to the liner being put in place to see if the trenches were in fact lowering the water table the way the design estimates had said they would. He said because of these design changes the Geological Survey Buruea's concerns have been addressed.

Lisa Davis-Cook asked if there would be a synthetic liner put in place for these pits.

Wayne Gieselman said the liner would consist of a compacted layer of clay approximately two feet thick on the floor and on the walls. He said one issue that was not addressed in Dr. Smith's presentation is what is the average high ground water elevation. That is an issue that has to dealt with in every permit the Department reviews. He said in this project the ground water monitoring wells that determined the groundwater level were installed in October of 2000 and with that year being a relatively dry year the Department had some concerns that the elevation was not the average or typical groundwater elevation. He said Dr. Sara Smith sent letters asking for additional monitoring to be done during a wetter period of time so that a more accurate level, this was not done by the applicant, but instead they raised the bottom of their basin five to six feet from what they originally proposed.

James Braun asked if there were to be monitoring wells around the site.

Wayne Gieselman said the monitoring wells that are required are to monitor what the groundwater level is.

James Braun asked how often the permit requires the applicant to test the ground water level.

Dr. Sara Smith said the permit requires the applicant to test the elevation monthly during the dry months and weekly for the wetter months for the next consecutive year and must be reported with the same frequency.

Lori Glanzman asked who would be responsible for monitoring the wells and the water quality.

Wayne Gieselman said the owner of the facility would be responsible for monitoring and reporting the results to the Department.

Darrell Hanson said during the last meeting the Commission proceeded under the theory that they had more latitude to revoke a permit than they had to reject one under the hearing process. He said the section that refers to revoking permits does seem to be pretty wide open, Chapter 65.7 (6) of the Iowa Code says it is the Commission's determination as to whether or not a facility is a serious environmental hazard. He asked if there had been any prior proceedings that might further restrict that rule.

Mike Smith of the Attorney General's office said the Department did a notice of intent to revoke a permit for a Decoster facility, after receiving the notice of intent Mr. Decoster redesigned the lagoon system at that facility and it never went to a formal proceeding. However, he said, it cannot be easier to revoke a permit than it is to deny one, because you have to have good reasons for either.

Darrell Hanson said during the last meeting he understood the only reason to deny the permit was if the Department had failed to follow some rule or procedure. However this particular rule says the grounds for revoking is if the Commission feels there is a potential for environmental damage.

Jeff Vonk said the result of that revocation would be a contested case hearing in front of an administrative law judge, so there needs to be a reason.

Mike Smith of the Attorney General's office said the standard referred to in Chapter 65.7(6) because at the end of the process it is necessary to determine that the operation constitutes a clear, present, and impending danger to the public health and environment is a tough standard to meet.

James Braun asked if there had been any calculations on the perceived average water table level as to how much water would be drawn off.

Dr. Sara Smith said the engineer submitted estimations that indicate it would be approximately 6,500 gallons per day.

James Braun asked where the water would go.

Dennis Johnson, design engineer from Windom, Minnesota, said because of an agreement with the county they would create a 3.8-acre flat area in the southeast corner of the site to catch the water from the drainage ditches and release it slowly.

Betty Ellis, Wright County Auditor said that there has been no agreement with Environ Egg filed in her office concerning the catch basin.

Chairman Terry Townsend called for comments from Wright County.

Michael Houser, Wright County Attorney said the County has serious questions as to whether the ground water level is going to be lowered effectively if at all. In addition to that concern, nobody knows what the true ground water level is, they have heard estimates and speculation on reliable calculations that appear to be appropriate, but they don't know. Without that knowledge the Commission would be gambling with their drinking water. He said the fecal material that is washed from the eggs will collect on the bottom of these basins and when the clay liner fails it will be the first thing out of the basins into the groundwater. He said economic sanctions or shutting down of the facility after the catastrophe has occurred does not change the quality of their water.

Mr. Thurman DeNio the property where Environ Egg is planning to locate used to be a wetland. He said under the current plan all of the water that is being drained will be channeled down to the corner of the property to the north road ditch and then crosses under a culvert into a field where it crosses under another culvert into the field that he and his family owns. He said there is a water way on his land that takes care of the rain when they have a five or six inch rain but it is normally dry. He said this plan will wash out his waterway and ruin the 80 acres. He said in addition to Environ Egg there is a Decoster hog facility to the north of his property, whose water also goes onto his land. He said there is so much water coming from the Decoster facility that the City had to put in a second culvert to keep the water from crossing the road. He said he has checked with his ASC office, who checked their soil maps and told him a six foot ditch will draw approximately 100 feet or fifty foot on each side for this type of soil and during heavy rains it will not draw that much. He asked how it was supposed to drain 266 feet.

Eric Davidson said according the NRCS office, given the soil types, the current design will probably draw down 100 to 105 feet. He said that there is one point that has been misaddressed repeatedly is how much groundwater will be going to those trenches. According to the packet that the Commission received it says there will be 6,500 gallons of ground water that will be going into those trenches. That is in fact the number of gallons of egg wash water that will be going into the trench and the calculations of how many gallons of groundwater will be drained has never been done.

Bob Libra said there was a variety of calculations involved in this situation. One of that was done was a calculation of what the draw down effect would be with and existing water table of a certain height and trenches at a certain depth. This does not imply how much water will go to the trenches.

Bob Palla, Senior Engineer for Animal Feeding Operations said the sixty five hundred gallons of seepage per day from the lagoons is based on maximum seepage rate of 1/16th inch per day, which is the maximum for a lagoon system. He said the permeability level of the clay liner has to at least meet that standard but typically they come in with lower permeability than the maximum allowed.

Eric Davidson asked Mr. Palla if he had done any calculations as to how much ground water would be going into the trenches.

Bob Palla said he had done some quick and approximate calculations based on some assumptions and came up with approximately 25,000 gallons per day.

Eric Davidson said in the packet of information given to the Commission it says 6,500 gallons of groundwater a day. The permit was issued on those lines. The groundwater lowering system was issued on those lines. He said these new calculations were done because he brought this up on Friday.

James Braun said there is a lot of difference between 6,500 gallons of water flowing across a grass waterway and the possibility of 25,200 gallons. He said there are surface drainage laws in the State of Iowa that says it is illegal to remove the contents of pond through moving of dirt so that you move the water from one pond into the next. He said he does not know if there are surface drainage laws that apply to the removal of this volume of water across a neighbor's land or not but if he were the neighbor he would be very concerned about that volume of water being moved across his land.

Darrell Hanson said as far as drainage being deposited at the property line in a naturally occurring depression or pre-existing waterway, Iowa Law for a hundred and some years was based on an old case law that said as long as you were draining water in a natural depression or a pre-existing waterway you could increase the volume or drainage rate in any way you wanted and it was the neighbor's problem. When the Groundwater Protection Law was passed an amendment was added to say if someone changes the volume or flow rate at the property line even if there was a natural depression or waterway the upstream neighbor was responsible for any damage that was caused by it. He said he believes that the law was repealed however a few years ago.

Lisa Davis Cook asked if the Department was requiring the pits to be dug to check the groundwater after the lowering system is put in place why not wait to find out what the results are going to be prior to granting the permit.

Wayne Gieselman said if the groundwater lowering system does not work then Environ Egg would not have the authority to use the basins because it is a condition of the permit.

Wayne Gieselman said he realized that there was some skepticism as to whether or not the system will work but the bottom line is that the plans have been prepared by engineers, they have been reviewed by engineers and it is the best professional judgement that has been presented to them. He said the issue of storm water runoff and increased flows should be an issue that will be

settled by civil actions by the two parties involved and not regulated by the government. He said the 1/16th of an inch standard for seepage is what is in the rules and these structures have been designed to meet those standards.

Dennis Johnson engineer for Environ Egg said Wright County hired an engineer from McClure Engineering who told them the runoff proposed facility would actually be less without detention than it is as farm ground because of grassed areas. He said that with the ponding being planed in the southeast corner it is estimated that there will be less storm water going across Mr. DeNio's property than there is currently. He said as for the 3,500 gallons a day it is based on a 1/16th through the material when there is a one foot liner that estimate is usually about 10 times less, therefore with a two foot liner he expects it to be less than that.

Dave Logemann, soils engineer for the Environ Egg project said they test a lot of compacted soil liners for lagoons, landfills, and so forth and they found that the typical permeability of a compacted soil liner would indicate that the 1/16th of an inch standard could be met with one inch of soil and since most liners are 12 inches seepage is usually less than the standard by a factor of 10. He said the other thing he wished to point out was that 3,500 gallon per day is less than the flow from a garden hose.

Larry Ginter, a farmer from Marshall County said the Commission has a moral responsibility to stop this facility.

Lisa Davis Cook said what bothers her most is the feeling of frustration because the Commission is told to protect the environment, but. She said she is very concerned about trying to artificially change the groundwater level. She feels that her ultimate responsibility as a member of the Commission is to protect the environment and to protect the people of Iowa. She is not in favor of this permit and even though she is aware that the Commission has voted to move forward with it, she wanted to be on record of saying she thinks it is a bad idea and she hopes that there are no unintended consequences of this thing leaking and the people of Wright County having their groundwater affected.

Kelly Tobin said the groundwater issue has really bothered him as well and he feels very strongly that there will be problems. For that reason and the concentration of hog and chicken facilities in the area is why he voted against it. He asked how many more facilities have to be built before a moratorium is put on it.

James Braun said as he has considered what is taking place in the State of Iowa, the conservative in him causes him to feel that the government closes to the people is the government that rules the best. He said he has reviewed Iowa Code on this issue, he has spoken to the Dean of the College of Law at the University of Iowa and another attorney who specializes in procedure about this issue. He also spent an hour with Attorney General Tom Miller before this meeting and he understands what Iowa Code says. He understands the dilemma that the department is in, he knows the people in the department and their concern to do their job and follow through with environmental responsibility, which is the reason for the Commission. He said under Iowa Code his responsibility is to protect the environment for present and future generations but also to uphold the Code of the State of Iowa. This puts him in a dilemma because there are laws in the

State of Iowa that in his opinion don't allow the Commission to protect the environment from situations like this. He said as he thought this through he thought of moral responsibility versus his responsibility under the law of the Code of Iowa. On the wall of the Capitol there is a statement that says the basis of every good law politically is moral integrity. He said he realizes that there is nothing the DNR can do legally once an operation has met all of the standards except grant the permit. Legally as an EPC he is under the same obligation, but morally he says this is wrong. He said it is his plan to return to the philosophy that the government who are closest to the people rule best, and will go on record as saying if a County objects to an operation, although he may not have the legal authority to vote no against it, but he will take the moral high ground and vote no if the County thinks it is wrong.

Lisa Davis Cook asked if the legal opinion was that the Commission has no authority to revoke the permit.

Terry Townsend said he didn't believe anyone had said that, but they have said the Commission would need grounds to do so.

Lisa Davis Cook asked when the results from the pits would be available.

Bob Libra said the pits had not yet been dug so they do not know when it will be available.

Hugh Espy from Iowa CCI asked if someone from the department would be going out to look at the pits.

Wayne Gieselman said the normal procedure is to have the applicant make those readings but if the Commission were to tell him that one of his field staff is to go out and take those readings he will do that.

Lisa Davis Cook said if the pits are being dug because the department still has a question then she believes someone from the department would be the one doing the testing.

Jeff Vonk said a staff member would do this testing for this site.

INFORMATIONAL ONLY

ADJOURNMENT

Motion was made by Kathryn Murphy to adjourn. Seconded by James Braun. Motion carried unanimously.

With no further business to come before the Environmental Protection Commission, Chairman Townsend adjourned the meeting at 4:47 p.m., Monday, October 8, 2001.

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Jeffrey R. Vonk, Director

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Terrance Townsend, Chair

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Rita Venner, Secretary

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